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Supreme Court of the United States

October Term, 1958

No. 429

JAMES S. PATTERSON, General Administrator for Mobile County, Alabama, as Administrator of the Estate of Edgar A. Doody, Jr., Deceased, *Petitioner*,
against
UNITED STATES OF AMERICA, *Respondent*.

LEONARD LESTER SULLIVAN, *Petitioner*,
against
UNITED STATES OF AMERICA, *Respondent*.

MELVIN A. HAYS, *Petitioner*,
against
UNITED STATES OF AMERICA, *Respondent*.

STERLING EUGENE DUNCAN, *Petitioner*,
against
UNITED STATES OF AMERICA, *Respondent*.

ALBERT VALLEBUONA, *Petitioner*,
against
UNITED STATES OF AMERICA, *Respondent*.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JACOB RASSNER,
Attorney for Petitioners.
15 Park Row,
New York, N. Y.

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Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The petitioners pray that a writ of certiorari issue to review the judgments of the United States Court of Appeals

for the Second Circuit entered in the above causes on July 11, 1958.

Opinions Below

The opinion of the United States District Court for the Southern District of New York, dated February 2, 1955 in the Patterson case is reported at 129 Fed. Supp. 794.

The opinion of the United States District Court for the Southern District of New York, dated April 15, 1955, in the Sullivan case is reported at 130 Fed. Supp. 53.

The memorandum opinion of the United States District Court for the Southern District of New York, dated July 18, 1955, in the Hays case, is reported at 1955 A. M. C. 1803, not otherwise reported.

The memorandum opinion of the United States District Court for the Southern District of New York, dated July 26, 1955, in the Duncan case is reported at 1955 A. M. C. 1804, not otherwise reported.

The opinion of the United States District Court for the Eastern District of New York, dated July 22, 1954 in the Vallebuona case is reported at 1955 A. M. C. 1204, not otherwise reported.

The opinions of the Court of Appeals in these cases (Appendix, pp. 17-21) are not yet reported.

Jurisdiction

The judgments of the Court of Appeals were entered on July 11, 1958. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

Questions Presented

1. Do men who are seamen "in fact" when employed by the United States Government, lose the rights accorded them by Congress and the rights which seamen enjoy under General Maritime Law, when such "seamen" are designated as "civilian employees", when in truth and in fact, such people actually perform the work traditionally performed by seamen?

2. Does the United States enjoy a special position in commerce by sea so that its employees who perform the work traditionally performed by seamen are barred from maintaining actions against the United States of America, when if such person were employed by a civilian shipowner, their naked designation as "civilian employee" would be deemed a nullity without any force or effect which could possibly deprive a seaman of his rights to maintain an action under *General* Maritime Law or under remedial legislation enacted for the benefit of seamen?

3. Which Court of Appeals, Second Circuit, or Eighth Circuit, has correctly interpreted the law? The Court of Appeals for the Second Circuit in the instant cases or the Court of Appeals for the Eighth Circuit in the case of *Inland Waterways Corp. v. Doyle*, 204 Fed. 2d 874.

Statement of Facts

Ths is a consolidated appeal in the five above-named actions involving common questions of law.

(1) James S. Patterson, as Administrator of the Estate of Edgar A. Doody, Jr., filed a libel on July 30, 1947, to recover for the wrongful death of the intestate on August 1, 1945. Decedent was a machinist employed by the Mechanical Division of the Panama Canal, an unincorporated agency of the United States, as a shore employee.

Doody was ordered to board the SS. HANGING ROCK, operated for the War Shipping Administration by War Emergency Tankers, Inc. He was ordered to check and adjust the speed of the forward feed pump turbine in the lower engine room. In the presence of a ship's officer he commenced his duties. The aforesaid ship's officer started up the turbine, and immediately parts of the governor mechanization broke from the turbine rotor, struck Doody on the left side of his head rendering his unconscious and causing his death. It is alleged that the machinery was in all respects defective and deceased was caused to suffer injuries and death by virtue of the said defective machinery which broke loose without warning.

Decedent was 33 years of age at the time of his death.

(2) Libelant, Albert Vallebuona, filed a libel on February 23, 1954, for injuries sustained on March 10, 1952, while employed as deckhand with the Motor Vehicle Dispatcher, Cargo Traffic Division, on the Government Barge 6034, then at the Brooklyn Army Base, Brooklyn, New York. Libelant was assigned the duty of securing the aforesaid barge unaided when his foot became enmeshed in the securing line and was forced against the bitt and his said left leg was crushed, necessitating an amputation of his left foot and ankle.

(3) Libelant Melvin A. Hays filed a libel on December 21, 1953, to recover for illness, to wit: tuberculosis, sustained by him while a member of the crew of the SS. MISSOURI. Liability is predicated upon the existence of conditions aboard the steamship vessel, such as dampness, inadequate and insufficient heating, maintenance and supervision of quarters, and defective ventilating machinery.

(4) Libelant Sterling Eugene Duncan filed a libel on June 29, 1953, to recover for illness, to wit: tuberculosis,

sustained by him while employed as a fireman on the SS. BATON ROUGE, managed and operated by the Inland Waterways Corporation. Liability is predicated upon the conditions existing aboard the aforesaid vessel, to wit: dampness, insufficient heating, inadequate maintenance and supervision of quarters and defective ventilating mechanisms.

(5) Leonard Lester Sullivan filed a libel on June 29, 1953, for injuries sustained by him on May 4, 1952, while employed by Inland Waterways Corporation in the capacity of deckhand on board the SS. ILLINOIS, owned and operated by the Inland Waterways Corporation. Libelant had been breaking ratchets in the tow of barges and subsequently returned to the tug while carrying an ax in his hand. As he stepped aboard the vessel at night, and by virtue of the absence of any light whatsoever, libelant's foot was caught in a steel cable, negligently permitted to remain on the deck, creating a hazardous condition, causing him to be swung about and hurled to the deck striking both shoulders against rope coils. Libelant suffered severe injuries to his lower back and legs. Libelant was 21 years of age at the time of the accident.

The Vallebuona libel involved a vessel in the public service of the United States and the other vessels were employed in the merchant service.

Libelant Patterson's intestate was a shoreside employee. Libelant Vallebuona, Hays, Duncan and Sullivan were all seamen.

In each action, respondent is liable by virtue of the negligence of its officers, agents, servants and employees, as well as by virtue of the manifest unseaworthiness of the vessels involved.

Reason for Granting the Writ

1. An Act of Congress has been interpreted by the Courts below as creating a new bar to a seaman's action or destroying rights formerly provided for the protection and benefit of seamen in the absence of language of the Act clearly susceptible of no other reasonable construction, but on the contrary, in the face of language which has caused Justices of the Supreme Court to be almost evenly divided as to the meaning and intent of said Act.

Insofar as the law is clearly established with relation to the creation of a new basis for a cause of action, it follows with the same force that the law should be likewise interpreted when an attempt is made to eliminate an existing basis for a cause of action.

Mr. Leavenworth Colby, Chief of the Admiralty and Shipping Section, who argued the within matters before the Circuit Court of the United States for the Second Circuit, after such argument, which took place on the 16th day of May, 1958, on the 29th day of May, 1958, wrote duplicate letters to Honorable Learned Hand, Honorable Carroll C. Hincks and Honorable Leonard P. Moore, calling their attention, amongst other things, to the following which is a quote from his letter on page 4 thereof:

> "Indeed, as the Court well said in *Kuhnert* v. *United States,* (8th Cir., 1942) 127 F. 2d 824, 826, 'We think that no court would be justified in interpreting an Act of Congress as creating a new cause of action against, or imposing a new liability upon, the United States unless the language of the act was clearly susceptible of no other reasonable construction.' See also *Atchley* v. *Tennessee Valley Authority* (N. D. Ala., 1947), 69 F. Supp. 952, 954. 'Jurisdiction of the defendant now exists where the defendant was immune from suit before; it remains for courts, in the exercise of their jurisdiction to determine whether any claim is recognizable in law.' *Feres* v. *United States,* 340 U. S. at 141."

The thought expressed in Mr. Colby's letter is that the law is well settled that an Act of Congress should not be interpreted as creating a new cause of action unless the language of the Act " * * * was clearly susceptible of no other reasonable construction."

However, by the force of the same argument, the same procedure should be followed in not destroying an existing cause of action under circumstances where a new cause of action would not be created.

2. Many seamen employed by the United States of America are being deprived of their rights by the expedient of designating them as "civilian employees", when in truth and in fact, they perform the duties traditionally performed by seamen.

3. The United States Supreme Court has left open in the cases of *Johansen* v. *U. S.* and *Mandel* v. *U. S.*, 343 U. S. 427, 72 S. Ct. 849, the question as to whether or not a civilian employee may maintain an action against the United States of America, or is relegated to the exclusive remedy of federal compensation if he was injured aboard a United States owned vessel engaged in general merchant service, rather than public service.

4. There is a conflict between various Appellate Courts of the United States, particularly between the Court of Appeals for the Second Circuit in the appeals herein sought to be reviewed, and the Court of Appeals for the Eighth Circuit in the case of *Inland Waterways Corp.* v. *Doyle*, 204 Fed. 2d 874.

5. There seems to be no distinction in the conditions under which seamen, labelled "civilian employees", work or the kind of duties they perform than the conditions or duties of seamen on privately owned vessels, and it would therefore seem that justice is not served when the United States of America enjoys special privileges which are not granted to private shipowners under identical circumstances.

6. The decisions in the *Johansen* and *Mandel* cases, *supra*, have resulted in grave inequalities to seamen, so that their rights of recovery are dependent upon their designation as "seamen" or "civilian employees", rather than on the duties which they perform.

7. The United States Supreme Court has stated that where circumstances are so altered that a reversal of its prior decision is justified to meet changing events, the Court will not hesitate to reverse itself. *Cosmopolitan Shipping Co. v. McAllister*, 337 U. S. 783, 69 Sup. Ct. 1317.

POINT I

Language which is susceptible of diametrically contrary construction by an almost equally divided court of the Supreme Court of the United States unquestionably would not be considered as sufficient justification for interpreting an Act of Congress as creating a new cause of action. Accordingly, by the use of the same scales of justice, there is no more justification for interpreting an act so drawn as to destroy an existing cause of action.

We beg the indulgence of the Court for our repetition under this Point of our argument under Point I of our reasons for granting the Writ.

> "Indeed, as the Court well said in *Kuhnert* v. *United States* (8th Cir., 1942), 127 F. 2d 824, 826, 'We thing that no court would be justified in interpreting an Act of Congress as creating a new cause of action against, or imposing a new liability upon, the United States unless the language of the act was clearly susceptible of no other reasonable construction.' See also *Atchley* v. *Tennessee Valley Authority* (N. D. Ala., 1947), 69 F. Supp. 952, 954. 'Jurisdiction of the defendant now exists where the defendant was immune from suit before; it remains for courts, in the exercise of their jurisdiction to determine

whether any claim is recognizable in law.' *Feres* v. *United States*, 340 U. S. at 141."

The thought expressed in Mr. Colby's letter is that the law is well settled that an Act of Congress should not be interpreted as creating a new cause of action unless the language of the Act " * * was clearly susceptible of no other reasonable construction."

However, by the force of the same argument, the same procedure should be followed in not destroying an existing cause of action under circumstances where a new cause of action would not be created.

POINT II

Seamen who perform the duties traditionally performed by seamen should not be deprived of the rights granted them by Congress or the benefits which they traditionally enjoy under General Maritime Law.

When in truth and in fact a person is a seaman, there seems no justification for treating him differently than any other seaman by the mere labelling of such seaman as a "civilian employee".

It would seem that a person should have the right to show that he was in fact a seaman and thereby entitled to the same benefits of law as any other seaman, rather than to summarily deny to him access to our Courts by the mere expedient of labelling him a "civilian employee".

The Supreme Court of the United States has stated in unequivocal language that it is not concerned with form but only with substantial justice. *Pope & Talbot* v. *Hawn*, 346 U. S. 406, 74 S. Ct. 202.

POINT III

The Supreme Court of the United States has left open and undecided in the *Johansen and Mandel* cases, *supra*, the applicability of said holdings to seamen employed aboard United States Government vessels utilized as merchant vessels, as distinguished from public vessels.

Uniformity of maritime law seems to be in conflict with the holding that a person performing seamen's duties on a Government owned vessel in public use is not entitled to the same protection and benefit of loss as a person performing the identical duties on an identical vessel identically owned but used as a merchant vessel rather than a public vessel.

Such holding imposes on a seaman the often impossible burden of proving the nature of the cargo and the service of the vessel on that particular voyage, which information is difficult if not impossible to ascertain.

Such distinction does not tend to mete out equal justice to all persons doing the identical work and performing the identical duties. Distinctions are made in law when they do not exist in truth or in fact.

POINT IV

The Court of Appeals for the Eighth Circuit differs with the Court of Appeals for the Second Circuit, which decisions make the choice of forum a deciding factor as to whether or not a certain class of seamen should or should not be deprived of the rights enjoyed generally by seamen of the United States.

The case of *Inland Waterways Corp.* v. *Doyle*, 204 Fed. 2d 874, specifically affirmed this distinction and squarely held that the Federal Employees Compensation Act does not provide an exclusive remedy for injury aboard a mer-

chant vessel. The Court distinguished the *Johansen* and *Mandel* cases on the specific ground that the aforesaid cases involved a public vessel and did not apply where the vessel in suit was a merchant vessel. Specific language of the Supreme Court in that decision was referred to by the Eighth Circuit as confirming the essential validity of the distinction.

In that case the Court said:

> "* * * There are, however, a number of statements in the opinion which indicate that the Supreme Court thought that the rights and remedies of such seamen depended upon whether the vessel upon which they were employed was a 'public vessel' or a 'merchant vessel'."

Thereafter, the Circuit Court pointed to portions of the Court's opinion which drew a distinction between seamen on public and merchant vessels and concluded on page 878:

> "Four of the Justices dissented in the Johansen case, and it seems reasonably apparent that the Justices who joined in the majority opinion were of the view that civilian seamen on a merchant vessel owned by the United States were not precluded by the Federal Employees' Compensation Act from electing to sue under the Suits in Admiralty Act for personal injuries received in the line of duty as the result of negligence."

This distinction is sound inasmuch as the vessels employed in the merchant service more directly compete with private shipowners and the principle of the necessity of uniformity and of unfair competition would more necessarily require that the seamen of merchant vessels be treated in precisely the same fashion, whether employed on private or government vessels.

The decision of *Inland Waterways Corp.* v. *Doyle*, *supra*, which appellant submits is in accord with sound legal principles, is in conflict with certain other decisions and said conflict requires resolution.

POINT V

The United States should be held liable in the operation of its vessels to the same extent as a private shipowner operating similar vessels in similar trade.

The Court below has relied on the decisions in the *Johansen* and *Mandel* cases in affirming the District Courts which sustained exceptive allegations to the libels in the respective cases herein involved.

The Court below felt constrained to follow the aforesaid decisions construing them as holding the remedy under the Federal Employees Corporation Act an exclusive remedy in actions for personal injuries by government employees injured on government vessels, although as hereinafter set forth, both involved public vessels as distinct from merchant vessels.

However, it is the contention of the appellants that circumstances have so changed since the *Johansen* and *Mandel* decisions as to require a reversal, and the adoption of the views expressed in the dissenting opinion in said cases.

The progress of shipping, both of merchant and public vessels demonstrate conclusively that the views expressed in the aforesaid dissenting opinion more adequately meet the needs of present day public and private shipping and tends to foster uniformity of maritime law and dispense equal justice to people similarly situated with others.

It is common knowledge, of which judicial notice must be taken, that to an increasing extent the United States has been utilizing the vessels owned and controlled by it, in commercial service. The United States is operating vessels in the same fashion as private steamship company operators and is in direct and continuous competition with such private shipowners. The adoption of the majority view in *Johansen* and *Mandel* creates a condition of dis-

tinctly unfair competition as against the private shipowner whose very existence is essential to the existence and continuance of a sound Merchant Marine so necessary to national defense.

Rights and privileges enjoyed by seamen on privately owned vessels are denied to them when they perform such duties on a vessel used in public service, if such seamen happen to be designated "civilian employees".

Experience indicates that not merely is there created such a condition of unfair competition aggravated by such a view, but also such doctrine destroys the uniformity in admiralty practice, so long highly regarded as the ideal and principle upon which American Admiralty Law is based. It is hornbook law that such uniformity is an essential concept which the courts will enforce.

The granting of rights to persons injured aboard privately owned vessels not granted to those similarly injured on vessels of the United States, although in identical capacities, destroys this uniformity and is repugnant to American judicial concepts. This is particularly true in times of expanding governmental use of vessels carrying commercial cargoes.

It is a factual matter that seamen are employed for a period of time only and frequently just briefly on a particular vessel, and often are not aware of the particular ownership of a particular vessel on which they may be serving. It is entirely incongruous to hold that his rights are to be determined by the fortuitous circumstance of ownership of the vessel. It is particularly so when he is employed one day on a privately owned vessel and on the next on a government owned one. Certainly, a seaman's rights should not depend upon the nature of the cargo as to whether or not our Civil Courts will be open to such seamen for the recovery of damages.

The fact that changing circumstances continually require restatement and reexamination of principles, particu-

larly in the Maritime field is shown by the fact that the Federal Employees Compensation Act, 5 U. S. C. 751 *et seq.*, enacted in 1916 was followed by the Jones Act, the Suits in Admiralty Act and the Public Vessels Act, all designed for expanding needs, and, in addition thereto, the Compensation Act itself was amended in 1949 with a specific exemption for seamen.

In view of the aforesaid, it is respectfully submitted that the aforesaid dissenting opinion the *Johansen* and *Mandel* cases, *supra*, be adopted.

It would appear that justice can best be provided by adopting the dissenting opinion in the *Johansen* and *Mandel* cases, *supra*.

In that opinion it was stated:

> "The Court, as it must, concedes that these actions are properly brought if the 'literal language' of the Public Vessels Act be adhered to"
>
> * * *
>
> "The Court's holding is as unique as the reasoning behind it. Time and time again during the last thirty years other federal courts have allowed injured employees to take their pick-receive compensation benefits, or sue for damages under the Public Vessels or some other Act. Moreover, the Court gives the Government precisely what Congress, after debate, refused to give in 1949. Government representatives then asked Congress to make the Compensation Act 'exclusive, and in place of all other liability of the United States.' The House yielded to this request. The House Report favoring the change stated that when the Compensation Act was enacted in 1916 a 'provision making the Compensation remedy exclusive apparently was then not deemed by the Congress to be necessary.' The Report also stated that such a provision was now needed because of acts such as the Public Vessels Act which 'in general terms' authorize the bringing of damage suits against the Government. The Senate refused to grant the Government's request and

prevailed upon the House to accept the present provision of the Act which states that: 'Nothing contained in this Act shall be construed to affect any maritime rights and remedies of a master or member of the crew of any vessel.' This Senate modification of the Bill, as it had passed the House, was offered by Senator Morse and accepted by Senator Douglas who was in charge of the bill. In offering this modification, Senator Morse said: 'Under existing law, Government-employed seamen have been accorded the right to assert their maritime rights against the United States under the Suits in Admiralty Act and Public Vessels Act * * *.' I feel they should not be deprived of benefits they have enjoyed for many years without opportunity to have their arguments carefully considered by the appropriate committees of the Congress * * *.' 95 Cong. Rec. 13608. Senator Douglas agreed to the modification, stating that 'The primary consideration for accepting the Senator's amendments preserving the maritime rights and other statutory remedies of seamen is the fact that no hearings were held, no arguments were heard, and no discussion was had on this aspect of the pending bill.' 95 Cong. Rec. 13609.

I do not think this Court should deprive these seamen of rights which the Congress of 1925 gave them and the Congress of 1949 refused to take away." (pp. 858-859).

* * *

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

JACOB RASSNER,
Attorney for Petitioner.

APPENDIX

Opinion of Hand, Hincks and Moore

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Nos. 302, 303, 305 & 306

(Argued May 16, 1958 Decided July 11, 1958)

Docket Nos. 23668, 23669, 23854 & 23855

JAMES S. PATTERSON, as Administrator,

Appellant,

v.

UNITED STATES,

Appellee.

LEONARD LESTER SULLIVAN,

Appellant,

v.

UNITED STATES,

Appellee.

MELVIN A. HAYS,

Appellant,

v.

UNITED STATES,

Appellee.

STERLING EUGENE DUNCAN,

Appellant,

v.

UNITED STATES,

Appellee.

Before:

HAND, HINCKS and MOORE, *Circuit Judges.*

All these appeals come up from decrees in suits in the admiralty, dismissing libels upon exceptive allegations of the respondent. The libels sought to recover for personal injuries suffered upon "merchant vessels", owned and operated by the United States.

JACOB RASSNER and IRWIN ASOFSY, for the appellants.
LEAVENWORTH COLBY, for the appellees.

HAND, *Circuit Judge*:

These four decrees, entered by Dimock, *J.*, Kaufman, *J.*, Palmieri, *J.* and Bicks, *J.*, in the order in which the titles are arranged herein, dismissed libels *in personam* to recover for injuries suffered by civil employees of the United States, upon ships, owned and operated by the United States. Patterson is the administrator of one, Doody, who was killed while employed as a machinist on a ship owned and operated by the War Shipping Administration although he was not employed "through" that Administration, and was not therefore covered by the "Clarification Act" of 1943 (50 U. S. Code Appendix § 1291). It is to be assumed that Doody met his death because of the unseaworthiness of the ship, or the negligence of those in charge of her, and that his administrator could recover, if the claim arose under the Suits in Admiralty Act (46 U. S. C. § 741). Sullivan, Hays and Duncan were all civil service seamen, employed as such upon "merchant vessels", publicly owned and operated ships of the United States. They too sued for injuries suffered under circumstances that would have entitled them to a recovery, had they been individually employed "through" the War Shipping Administration.

All were entitled to compensation under the Federal Employees Compensation Act (5 U. S. Code 751 *et seq.*) and the question in all the suits is whether that was their exclusive remedy, or whether the Suits in Admiralty Act (48 U. S. C. 741 *et seq.*) was also open to them.

In *Johansen* v. *United States*, 343 U. S. 247, the Supreme Court held that a person injured on board a "Public Vessel" owned and operated by the United States might not recover under the Public Vessels Act (46 U. S. C. § 781 *et seq.*), his only recourse being under the Federal Employees Compensation Act. The only question before us is therefore whether the same reasoning applies to suits under the Suits in Admiralty Act. In *Johansen's* case the vessel was a troop transport, and could not be regarded as in any sense a "merchant vessel"; in the case at bar the opposite was true, as we have already said. Save for one consideration that we shall mention in a moment, it might be hard to understand why the language of the Suits in Admiralty Act should not apply: "In cases where if such vessel were privately owned and possessed, * * * a libel in personam may be brought * * * provided that such vessel is employed as a merchant vessel." (46 U. S. C. § 742.) Indeed such a conclusion would be reinforced by the preceding section (§ 741) that forbids the creation of maritime liens on "merchant vessels" of the United States such as would arise if the "merchant vessel" were privately owned. On the other hand, if the proper purport of § 742 was generally to assimilate claims against the United States for injuries arising on its "merchant vessels" to those arising in the case of privately owned ships, the "Clarification Act" of 1943 was unnecessary which limited the same relief to "seamen" "employed on United States * * * vessels through the War Shipping Administration." The Fourth Circuit in *United States* v. *Marine*, 155 Fed. (2) 456, had held that the Suits in Admiralty Act did apply, although the libellant was not employed "through the War

Shipping Administration"; and, as a new question, it might have been held that the grant of a claim by the Clarification Act of 1943 did not inevitably presuppose that such claims had not been already covered by the Suits in Admiralty Act. However, the Supreme Court in *Johansen* v. *United States*, *supra* (p. 439), specifically declared that *United States* v. *Marine*, *supra*, was not rightly decided and made no distinction between it and a libel under the "Public Vessels Act." Moreover, the Eighth Circuit in *Inland Waterways Corporation* v. *Doyle*, 204 Fed. (2) 874, although it did distinguish between "public vessels" and "merchant vessels", declared (p. 878): "We have no hesitation in saying that we can conceive no sound reason for making a distinction with respect to remedies between civilian seamen employed by the United States on its 'public vessels.'" It appears not to have observed the disapproval of *United States* v. *Marine*, *supra*, 155 Fed. (2) that we have just mentioned. We feel bound to hold that the Court did not mean to recognize any such distinction which we too think is not "sound". As *res integra*, there was indeed more reason for reading broadly the "Public Vessels Act" (46 U. S. C. § 781) than the "Suits in Admiralty Act" (46 U. S. C. § 782) because the "Public Vessels Act", is not subject to the implication arising from the express grant of relief to employees of the War Shipping Board, that is relevant in the interpretation of the "Suits in Admiralty Act".

As for the Clarification Act of 1949 (63 St. L. 854), it is altogether clear that the subsection 2 of § 201 and § 305(b) were not intended to do more than leave untouched the rights of seamen as they already were (*Johansen* v. *United States*, *supra*, 436-438).

The decrees are affirmed.

Opinion of Hand and Hincks

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 304—October Term, 1957

(Argued May 16, 1958 Decided July 11, 1958)

Docket No. 23702

—o—

ALBERT VALLEBUONA,

Appellant,

v.

UNITED STATES,

Appellee.

—o—

Before:

HAND, HINCKS, *Circuit Judges.*

On appeal from a decree in the admiralty, Inch, *J.*, presiding, dismissing a libel to recover injuries suffered by a civilian seaman of the Army under the Suits in Admiralty Act.

JACOB RASSNER and IRWIN ASOFSY, for the appellants.

LEAVENWORTH COLBY, for the appellees.

PER CURIAM:

Decree affirmed on the authority of *Patterson* v. *United States* and three other cases handed down herewith.

Judgment Pertaining to James S. Patterson, General Administer for Mobile County, Alabama, as Administer of the Estate of Edgar A. Doody, Jr., Deceased

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the eleventh day of July, one thousand nine hundred and fifty-eight.

Present:

HON. LEARNED HAND,
" CARROLL C. HINCKS,
" LEONARD P. MOORE,
Circuit Judges.

—o—

JAMES S. PATTERSON, General Administer for Mobile County, Alabama, as Administer of the Estate of EDGAR A. DOODY, JR., deceased,

Libelant-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

—o—

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the decree of said District Court be and it hereby is affirmed; with costs to the appellee.

A. DANIEL FUSARO,
Clerk.

Judgment Pertaining to Leonard Lester Sullivan

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the eleventh day of July, one thousand nine hundred and fifty-eight.

Present:

HON. LEARNED HAND,
" CARROLL C. HINCKS,
" LEONARD P. MOORE,
Circuit Judges.

—o—

LEONARD LESTER SULLIVAN,
Libelant-Appellant,

v.

UNITED STATES OF AMERICA,
Respondent-Appellee.

—o—

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the decree of said District Court be and it hereby is affirmed; with costs to the appellee.

A. DANIEL FUSARO,
Clerk.

Judgment Pertaining to Melvin A. Hays

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the eleventh day of July, one thousand nine hundred and fifty-eight.

Present:

HON. LEARNED HAND,
" CARROLL C. HINCKS,
" LEONARD P. MOORE,
Circuit Judges.

—o—

MELVIN A. HAYS,
Libelant-Appellant,

v.

UNITED STATES OF AMERICA,
Respondent-Appellee.

—o—

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the decree of said District Court be and it hereby is affirmed; with costs to the appellee.

A. DANIEL FUSARO,
Clerk.

Judgment Pertaining to Sterling Eugene Duncan

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the eleventh day of July, one thousand nine hundred and fifty-eight.

Present:

HON. LEARNED HAND,
" CARROLL C. HINCKS,
" LEONARD P. MOORE,
Circuit Judges.

———o———

STERLING EUGENE DUNCAN,
Libelant-Appellant,

v.

UNITED STATES OF AMERICA,
Respondent-Appellee.

———o———

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the decree of said District Court be and it hereby is affirmed; with costs to the appellee.

A. DANIEL FUSARO,
Clerk.

Judgment Pertaining to Albert Vallebuona

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the eleventh day of July, one thousand nine hundred and fifty-eight.

Present:

HON. LEARNED HAND,
" CARROLL C. HINCKS,
Circuit Judges.

—o—

ALBERT VALLEBUONA,
Libelant-Appellant,

v.

UNITED STATES OF AMERICA,
Respondent-Appellee.

—o—

Appeal from the United States District Court for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the decree of said District Court be and it hereby is affirmed; with costs to the appellee.

A. DANIEL FUSARO,
Clerk.

FILED
NOV 5 1958
JAMES R. BROWNING, Clerk

No. 429

In the Supreme Court of the United States

OCTOBER TERM, 1958

JAMES S. PATTERSON, GENERAL ADMINISTRATOR FOR MOBILE COUNTY, ALABAMA, AS ADMINISTRATOR OF THE ESTATE OF EDGAR A. DOODY, JR., DECEASED, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES

J. LEE RANKIN,
Solicitor General,
Department of Justice, Washington 25, D. C.

In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 429

JAMES S. PATTERSON, GENERAL ADMINISTRATOR FOR MOBILE COUNTY, ALABAMA, AS ADMINISTRATOR OF THE ESTATE OF EDGAR A. DOODY, JR., DECEASED, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES

In *Johansen* v. *United States,* 343 U. S. 427, this Court held that a civilian employee of the United States who was covered by the Federal Employees Compensation Act, and who was injured in the performance of his duty as a seaman on a publicly owned and operated vessel, employed solely for public purposes, might not recover by suit under the Public Vessels Act (which supplemented and amended the Suits in Admiralty Act).

Upon the basis of the *Johansen* decision and the reasoning expressed therein, the court below has held that civilian employees of the United States who are covered by the Federal Employees Compensation Act,